

REMARKS

Examiner Interview Summary

Applicants' undersigned attorney would like to thank Examiner Duong for the courtesies extended during the telephonic interview that took place on November 20, 2008. During the interview, applicants' attorney requested that the Examiner reconsider the finality of the Office Action mailed on August 20, 2008, and issue a new non-final Office Action. At the conclusion of the interview, the Examiner agreed to issue a new, non-final Office Action. Applicants' justification for requesting reconsideration of the finality of the August 20, 2008 Office Action and issuance of a new non-final Office Action is explained below.

On November 9, 2007, the Examiner issued a non-final Office Action relating to the subject application. In the November 9, 2007 Office Action, Claims 9 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,615,212 ("Dutta") in view of U.S. Patent No. 6,226,675 ("Meltzer"), as were the corresponding independent claims 8 and 14.

In a response filed on May 9, 2008, applicants amended independent claims 8 and 14 to include the language of dependent claims 9 and 16, respectively, and traversed the rejection of the claims under 35 U.S.C. § 103(a). No other amendments were made to the claims.

On August 20, 2008, the Examiner issued the Office Action that was designated as Final. In the August 20, 2008 Final Office Action, independent claims 8 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Dutta, Meltzer, and in further view a new document, U.S. Patent No. 6,226,675 ("Meltzer"). These rejections constitute new grounds of rejection, as correctly noted by the Examiner on page 12 of the August 20, 2008 Office Action.

Applicants submit, as discussed during telephonic interview, that the August 20, 2008 Final Office Action is improper as the Office Action has been improperly designated as a final. Section 706.07(a) of the MPEP, titled "Final Rejection, When Proper on Second Action" clearly states, in part:

[S]econd or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither


necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). . . . A second or any subsequent action on the merits in any application or patent involved in reexamination proceedings should not be made final if it includes a rejection, on prior art not of record, of any claim amended to include limitations which should reasonably have been expected to be claimed.

Applicants submit that the new grounds of rejection asserted in the August 20, 2008 Final Office Action were not necessitated by applicants' amendment of the claims. Additionally, applicants submit that the new grounds of rejection were not based on information submitted in an IDS filed during the time period set forth in 37 CFR § 1.97(c). Indeed, the references cited by the Examiner were not submitted in an IDS filed during the period set forth in 37 CFR § 1.97(c). Because the new grounds of rejection were neither necessitated by applicants' amendment of the claims, nor based on information submitted in an IDS filed during the period set forth in 37 CFR § 1.97(c), applicants submit that the Office Action mailed on October 7, 2008 should not have been designated as a Final Office Action.

Application No.: 09/693,512
Response Dated November 20, 2008

At the conclusion of the telephonic interview, the Examiner agreed to withdraw the finality of the August 20, 2008 Office Action and issue a new non-final Office Action resetting the period for response.

Respectfully submitted,


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